

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

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Mailed To:

Office of Secretary FCC
1919 M. Street N. W.
Washington D. C. 20554

Before the
Federal Communications Commission
Washington, D. C. 20554

Ref.: Additional comments to petitions filed in opposition of CC95-155/FCC97-123 & Rule 52.107 claiming the commissioners' rule is vicarious and arbitrary.

As a small business, I am in direct opposition to Order #52.107. I would like to point out that the commissioners' yes vote on this rule was ill conceived and ill advised while conflicting with FCC and other governmental orders as follows:

- (1) Violations of the Telecommunications Act of 1996, that directs FCC to deregulate the telecommunications industry and to make no rules that would reduce competition or reduce innovative activities of small telecommunications businesses;
- (2) Conflicts with the fact that FCC has considered holding, selling, buying and brokering of numbers as a legal activity for over 20 years.

A precedence was established as a result of these 2 actions and many new innovative small businesses were born that have for years legally provided subscribers with an alternative way to secure select numbers in the so called secondary market. The secondary market provided the much-needed competition to the traditional primary market dominated by some of the largest companies in the world. These new small innovative secondary market companies also provide a number of other valuable services including internet URL address coordination, the market evaluation of a select number and the much-needed public awareness of the tremendous value of a toll free number. These services can not be found through virtually any other source in today's market.

The Telecommunications Act gives FCC the sole authority to allocate numbers efficiently through the Resp Org distribution system. However, the Act did not give the FCC jurisdiction to take away a subscribers number, after it was obtained through the issuance process, and in use by the subscriber. This jurisdiction is currently held by the Civil Court system. This system has provided

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

a balance method of protection for not only the plaintiffs claim against misuse of a number by its owner, but also the owner is also protected with counter suit rights against frivolous and false claims by another party. This balance protection is totally missing from Rule 52.107.

Vagueness and ambiguity of the rule is a result of no legislative directive to the FCC to make such a rule. Abuse and misinterpretation of the rule will cause major financial and legal difficulties for the Resp Org's, subscribers and FCC/SMS toll free system. This will put the owners at risk of continuous claims for reassignment of their numbers. There is no protection for the owners against false claims that will disrupt and cripple many small businesses and will lead to select enforcement against them.

Preempts the legislative committee's authority to conduct public hearings on the hoarding and brokering issue that was discussed as part of their consideration for a ruling on the 800/888 number replication issue still pending before those committees and other phone number protection acts pending by legislative committees. The commissioners' rule makes criminals out of subscribers for holding, selling and brokering numbers when there is no shortage of toll free numbers and no conclusive proof that selling of numbers by their owner has created a compelling public need for a law against this activity.

Violation of "Notice to Subscribers" under Small Business Regulation Flexibility Act (SBRFA) was clearly violated, as it relates to full and timely notice required by all affected federal agencies who enact rules, that may negatively impact small business. The commissioners knew, or should have known, rule 52.107 would negatively impact 8 groups of small businesses who own over 50 percent of the 11 million numbers assigned. They are the principle targets of enforcement and are being forced out of business by Rule 52.107. The rule will have profound implications on a variety of small businesses as follows.

1. Small business subscribers with a low or no use of toll free number service
2. Small business subscribers with multi low use or no toll free number service
3. Small business subscribers who want to sell their number to another subscriber
4. Small businesses who buy other subscriber's numbers to use in their businesses
5. Small business telecommunications brokers, consultants and agents that assist subscribers in buying or selling their numbers at market value
6. Small business telemarketing companies that provide customers with their numbers on a sale or lease basis
7. Small business answering services and beeper services who hold numbers to assign to their customers, and

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

8. All other small businesses that refuse to give up their numbers when requested by a Resp Org.

Violations of due process of SBRFA: Rule 52.107 will be the single most costly regulation ever undertaken by the FCC against millions of small business subscribers. Given the scope and gravity of the financial impacts on small businesses, the FCC failed to use extra care and deliberation in the passage of criminal penalties, which will effect mostly small businesses who are trying to compete with big carriers and other big business for select toll free numbers. The FCC's initial and final compliance statements are misleading and inaccurate in regard to the real impact of the Rule, in the following areas of SBRFA.

1. There was no small business advocate representative identified in the hearing process to stress the magnitude of the impact this rule will have on small businesses.
2. There were no public forum presentations or notices issued to the subscribers.
3. No records are available; showing the Commissioners relied on recommendations from any Resp Org groups, subscriber groups, small business groups, industrial groups, or the North American Numbering Plan council, in approving Rule 52.107.
4. No records are available of the FCC's OCBO or Legal Staff recommendations to the commissioners on approving 52.107.
5. The hearing was conducted largely with the Big Resp Orgs and their Big business clients, seeking their own special interest in the primary market while eliminating competition of the innovative secondary market, by the adoption of Rule 52.107.
6. Small business and subscribers, doing business in the previously legal secondary market, were not adequately represented, as a result of FCC's failure to fully comply with SBRFA.
7. No legally adequate Analysis or Certification of negative impacts on the number and types of small business have been made as required by the SBRFA.
8. No in depth study of alternative solutions or how to minimize the impact to small businesses were considered who were already doing business in the innovative secondary market.
9. FCC statement #141, that small business will not be unreasonably harmed because "all subscribers" are subject to the same Rule, is a false statement given the differences in the size and resources of small businesses in competition with big businesses. The rule has a disproportional negative impact on small businesses and a benefit to big businesses by eliminating competition. The rules new requirements of (1) intent to use, (2) amount of use, (3) a rebuttable presumption of guilt of routing multiple numbers to one

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

end user. This will create false claims and select enforcement against small business subscribers.

10. Creation of criminal and Resp Org level penalties on subscribers involved in the secondary market are unreasonable.
11. Rule 52.107's creation of a rebuttable presumption of guilt, if a subscriber has other numbers, denies the subscriber the right to be presumed innocent until proven guilty. This puts an unreasonable legal burden on small businesses that are competing in the new innovative telemarketing industry against big businesses with vastly different legal resources.

Jurisdictional Area Limitations of the FCC makes an illegal and unauthorized subscriber classification system, that is the citizen/subscribers of the USA only, are effected by Rule 52.107, whereas, Citizen/Subscribers of Canada and other foreign countries in the Caribbean are not restricted by 52.107. This represents a major disadvantage to all businesses in the U.S. and its territories that are in competition with these unrestricted countries. This may create a mass exit of US subscribers to Canadian Resp Org or other foreign safe havens.

Exemption classifications for legitimate ongoing small businesses, that need specific exemptions to continue their business, to provide certain services for customers and meet other business commitments and loan obligations. Such businesses are in need of regulatory relief pursuant to SBRFA.

1. Telemarketing service companies
2. Bundle service providers
3. Shared use providers
4. Toll free resellers

Rule 52.107 has no exemptions for these existing businesses and therefor are laboring under the uncertainty of whether their daily business activities are illegal and subject to Resp Org Level penalties which is a violation of President Clinton's directives on reasonable penalty policies contained in SBRFA. Simply mentioning an exemption for undefined telemarketing bureaus in the adoption language is a prelude to select enforcement of Rule 52.107, against small business subscribers.

Subscribers have legally held and paid for toll free numbers over the years creating equity, and in some cases, considerable market value in excess of \$100,000. Toll free numbers like 1-800-777-7777 and 1-800-COLLECT can be worth in excess of \$200,000 because of the public acceptance of easy dial and user friendly marketing address systems. Some of the best 800 series numbers are held by small subscribers that have no idea their number may spell 1-800-ORDER-NOW that would have maybe \$100,000 current market value in 1997 and by the year 2000 could exceed \$300,000. For FCC Rule 52.107 to put this

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

subscriber's number at risk and losing its market value for any reason is unscrupulous and should be illegal. However, Rule 52.107 does not change the value of the number, it simply changes the method in which the buyer will acquire the number. After all, Rule 52.107 has made it illegal to simply buy the number from its owner. So the buyer will simply file a claim through any Resp Org against the current owner and their Resp Org to try and force the owners number back into the SMS pool for reissue. If the buyer tracks and properly times this reissue process with the added trick of requesting say 20 different other Resp Org to go after the number for its new owner, will have a very good chance at getting the number for almost free. I say "almost free," because the buyer may spend half an hour filing the first claim, half an hour tracking during the reissue period of the number, and finally, one hour ordering the number through 20 other Resp Orgs, in order to trap the number the first second that it's available for reassignment by FCC/SMS system. If a business can not get the number the old fashion way, of buying it, they will certainly consider their option to file a claim for it. This will create a whole new breed of Telecommunications consultant agents that are experts on the tactical use of 52.107, that has no rules in it to protect the owners from false claims harassment.

This is one of hundreds of various scenarios that will start playing out soon, as the Resp Orgs, subscribers and their agents prepare their new game plan in this multi billion dollar industry, where the right phone number, worth hundreds of thousands of dollars, can be acquired almost free, with the proper tactical use of FCC Rule 52.107. The FCC has made a series of mistakes in adopting this new rule and additional mistakes in how they think it will be used.

Portability seems to clearly be one right given to subscribers and it conflicts with the limiting effects imposed on it by Rule 52.107. Portability recognizes the value and importance of a subscriber's selected number and the right to place it with the carrier of choice. Rule 52.107 undermines the real intent of portability.

The Small Business Regulatory Flexibility Act (SBRFA), signed into Federal Law on 3/29/96 by President Clinton, has been obviously ignored. This is evidenced by so many Gross Violations of the CC-95-ISS/FCC97-123, Rule 52.107 and its adoption process, that they render Rule 52.107 completely unenforceable by the FCC and their Resp Org's, on any small business subscribers, as defined in the Section #3 of the Small Business Act. FCC has made only a token attempt at being in compliance with SBRFA and the profound implications on millions of small businesses is negligently understated in the compliance statements.

It is unlikely the FCC Dept. Head could ever legally certify that Rule 52.107 will be brought into compliance as required and enforceable against Small Business subscribers given their protection from unnecessary and unreasonable regulations under the SBRFA. It is not realistic, as FCC has stated that all

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

businesses will be impacted equally given the difference in resources of small businesses versus big businesses.

Even certain FCC Legislative Committee members wanted to auction off select numbers for government profit. Surely the FCC can foresee what the big Resp Orgs and their big business clients will do to small subscribers with Rule 52.107.

Many Resp Orgs have cautioned the FCC against the taking away of a subscriber's numbers. These Resp Orgs know they would never try to enforce 52.107 against a big business account. In fact, they would end up having to defend their big business clients if the FCC tried to enforce 52.107 against them. So who else is left but small business that results in select enforcement that everyone knows is illegal. There would also be a need for additional rules and penalties against those Resp Orgs that did not enforce the rule equally as intended. The Resp Orgs instead recommends better public education, issuance eligibility guidelines, allocation side management of reserve periods and better warehousing enforcement procedures rather than vague ambiguous subscriber misuse rules and penalties.

With so many irregularities occurring in the adoption of Rule 52.107, imagine the level of misuse that will occur if it is incorporated into tariffs for enforcement by over 160 Resp Orgs and subject to claims from 6 million subscribers for over 14 million possible numbers in 1997 alone. The contest will become very aggressive when the players learn there are absolutely no FCC rules or penalties against false claims of hoarding against an owner by a Resp Org/or a client and their agents seeking the owners number using Rule 52.107. The impact and harassment to small businesses will be profound and frequent litigation will result. Prior to 52.107, litigation was rare for claims against misuse of a subscriber's number and the courts have rarely, if ever, taken a number away from its legal owner.

FCC should have more confidence in the Free Market System, which will seek its own level of supply and demand creating real market value, through the so called secondary market competition which many small innovative telemarketing businesses have provided, and less in the Federal regulations like 52.107 that will create far more problems than it solves.

Summary of why Rule 52.107 is unfair:

1. No prohibition of holding and/or brokering numbers for the past 20 years, thus it has become an accepted activity (see exhibit A, FCC Internet).
2. The Telecommunications Act ordered deregulation of big carriers while protecting and encouraging innovative new telecommunications business and practices.

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

3. Public acceptance and reliance on easy dial and user friendly numbers, being provided by small businesses, saves consumers' time and money.
4. Public preference for the original 800 series numbers which big business wants reallocated.
5. The Rule is anti-competition against small business that have created a legal secondary market where subscribers can select and be made fully aware of the highest and best use of toll free numbers.
6. There is no evidence that the small secondary market companies created a shortage of numbers.
7. There is no evidence that the numerous complaints of hoarding, FCC eluded to, were qualified or quantified sufficiently for any enforcement or legislative action.
8. There is no shortage of toll free numbers, there is only a shortage of the original 800 series numbers.

Small innovative telecommunications businesses and other subscribers have created this secondary market to provide numbers for other businesses, who want a select number and could not get it from the Resp Org of their choice. For the FCC, at this late date, to make these businesses and their activity illegal, stating there are no rights to toll free numbers, that a subscriber only has an undefined interest, is simply unfair and legally unacceptable. FCC should not attempt to deny small businesses and consumers the opportunity to deal in this new innovative secondary market, which competes with the carriers and Resp Orgs, to supply consumers with select numbers and market value information that is unattainable from any other source.

The commission should reverse Rule 52.107. Its over regulation will give big Resp Orgs and their clients an unfair competitive advantage over small subscribers, creating a legal battlefield that would undermine and severely complicate the North American Numbering Plan with its ill conceived conservation program. This is not in the best interest of subscribers, Resp Orgs or the FCC/SMS; to take away a number after it has been assigned.

Rule 52.107 should be limited to the pre-issuance reservation policy and Resp Org distribution side of their allocation authority. Once issued, the taking away of a subscriber's number is beyond the scope of the FCC jurisdiction.

The commissioners should give consideration to those small businesses and subscribers, dealing in the secondary market, who have been providing legitimate and valuable enhanced services to subscribers of toll free numbers. These small companies do compete against the FCC primary Resp Org allocation system but do not have the resources of the large Resp Orgs or the large pool of numbers to select from. For the commissioners to now outlaw this

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

competition, without consideration for flexible regulatory alternatives for these small businesses, is vicarious regulation.

I respectfully ask the Commission for a quick response for the Reversal of Rule 52.107 that would negate the need for a grievance to be filed for the required compliance of Rule 52.107 under the SBRFA.

Sincerely,



Nathan Hart, President
Tellnet Communications, Inc.
7611 Ehrlich Road
Tampa, FL 33625
(813) 920-7777

cc: U.S. Small Business Administration
Office of the Chief Counsel for Advocacy
Attn: Mr. Jerry Glover
409 Third Street SW
Washington, DC 20416
Tel. (220) 205-6533

Office of Management & Budget
Attn: Tim Fain
725 17th Street NW
Washington, DC 20503
Tel. (202) 395-5897

P.S. ...In reply to U S West's comments about Tellnet Communications petition:

1. May 25, 1997 was the effective date of Rule 52.107 (page 4)
2. I'm surprised at how U S West can determine that Tellnet Communications has "no legitimate interest" in a number by merely reading our petition (page 4)
3. I can remind U S West that it took numerous calls and letters from Tellnet Communications over a 3 month period to get U S West to stop giving our 1-800-INTERACT® number to their major accounts, who were calling Tellnet Communications about the U S West Enterprise/InteractiveServices they had

FCC Petition Additional Comments

By: Tellnet Communications, Inc.

in April 1996. I'm sure that incident was an honest printing error but without our service mark and the advent of Rule 52.107 who knows what might have happened if the same thing occurred again today.

4. I think every small business 800 subscriber U S West has would also request to be exempt from Rule 52.107 if U S West would simply explain the rationale of it to them (page 4)
5. U S West should also disclose and explain to every subscriber that they have "no ownership rights" in their number but they do have some undefined "interest" in their numbers. TRUTH IN TOLL FREE SERVICE needs to become a reality to clear up these ambiguous explanations (page 5)
6. Tellnet Communications agrees with U S West about a suitable complaint process. It has been the civil courts that have handled number disputes for over 20 years, and should continue without Rule 52.107, whereas, the burden of proof for misuse of a number is on the plaintiff and they must be identified. This adds the necessary balanced protection for owners from false claims that are subject to counter suits. Leaving Resp Orgs to enforce Rule 52.107 will result in "almost certain litigation" between them and the owners of toll free numbers.